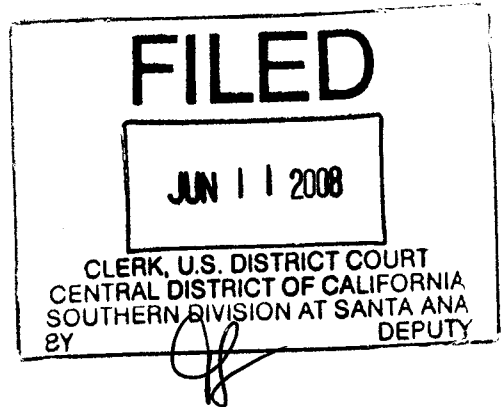


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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

LESLIE FRANK PAYNE,  
Plaintiff,  
v.  
LEE BACA, et al.,  
Defendants.

Case No. CV 08-3509-PA (MLG)  
MEMORANDUM AND ORDER DISMISSING  
DEFENDANTS BACA, CLAYBROOK  
DAFEEND AND EVERS WITH LEAVE TO  
AMEND

Plaintiff Leslie Frank Payne, who is currently a state prisoner incarcerated at the California State Prison in Lancaster, California, filed this pro se civil rights complaint pursuant to 42 U.S.C. § 1983 on June 4, 2008. The complaint names as defendants Lee Baca, Sheriff of Los Angeles County;<sup>1</sup> Deputy Sheriff Bryant, Sgt. Evers; and Drs. Claybrook and Dafeend. For the reasons set forth below, the complaint is **DISMISSED** as to all defendants but Bryant

<sup>1</sup> Plaintiff also names "Twin Towers", which the Court assumes as the Los Angeles County Jail, as a Defendant. As he cannot state a cause of action against a building, the Court will assume that he intended to name Sheriff Baca or the Sheriff's Department as the Defendant.

1 with leave to amend. *Lopez v. Smith*, 203 F.3d 1122 (9th Cir. 2000)  
2 (pro se litigant should be given an opportunity to amend deficient  
3 pleadings unless it is clear that these deficiencies cannot be  
4 overcome).

5  
6 **I. The Facts**

7 Plaintiff alleges that on January 25, 2008, he was being held  
8 at the Twin Towers jail facility in Los Angeles County. As far as the  
9 Court can ascertain, Plaintiff asserts that he requested medical  
10 treatment for a staph infection from Dr. Claybrook and Dr. Dafeend.  
11 Plaintiff claims that instead of providing him the treatment he  
12 sought, Plaintiff was placed in the suicide pod of the jail and  
13 administered some sort of medication. Plaintiff alleges that Sgt.  
14 Evers lied to him and told him that he was going to the hospital. He  
15 further alleges that Officer Bryant, who worked on the suicide pod,  
16 cuffed him behind his back and slammed his face into the corner of  
17 a wall. Lee Baca and "Twin Towers" are named as Defendants in their  
18 supervisory capacity. Plaintiff seeks \$3,000,000.00 in damages.

19  
20 **II. Discussion and Analysis**

21 **A. Duty to Screen.**

22 The Court has screened the Complaint prior to ordering service,  
23 for purposes of determining whether the action is frivolous or  
24 malicious; or fails to state a claim on which relief may be granted;  
25 or seeks monetary relief against a defendant who is immune from such  
26 relief. See 28 U.S.C. § 1915(e)(2).

27 The Court's screening of the Complaint under the foregoing  
28 statute is governed by the following standards. A complaint may be

1 dismissed as a matter of law for failure to state a claim for two  
2 reasons: (1) lack of a cognizable legal theory; or (2) insufficient  
3 facts under a cognizable legal theory. *Balistreri v. Pacifica Police*  
4 *Dept.*, 901 F.2d 696, 699 (9<sup>th</sup> Cir. 1990). Since Plaintiff is appearing  
5 *pro se*, the Court must construe the allegations of the Complaint  
6 liberally and must afford Plaintiff the benefit of any doubt. See  
7 *Karim-Panahi v. Los Angeles Police Dep't*, 839 F.2d 621, 623 (9<sup>th</sup> Cir.  
8 1988). Moreover, in determining whether a complaint states a claim  
9 on which relief may be granted, allegations of material fact are  
10 taken as true and construed in the light most favorable to the  
11 Plaintiff. *Love v. United States*, 915 F.2d 1242, 1245 (9<sup>th</sup> Cir.  
12 1989).

13  
14 **B. Plaintiff Has Failed To State A Claim Upon Which Relief May**  
15 **Be Granted Against Sheriff Baca or the Sheriff's**  
16 **Department.**

17 To the extent that Plaintiff is alleging that Sheriff Lee Baca  
18 or the Sheriff's Department is liable due to their supervisory role  
19 over the other defendants, he has failed to state a claim upon which  
20 relief may be granted. Supervisory officials are generally not  
21 responsible for the conduct of their subordinates on a theory of  
22 vicarious liability in civil rights actions brought under 42 U.S.C.  
23 § 1983. *Monell v. Department of Social Svs.*, 436 U.S. 658, 691-92  
24 (1978); *Jeffers v. Gomez*, 267 F.3d 895, 915 (9<sup>th</sup> Cir. 2001); *Bibeau*  
25 *v. Pacific Northwest Research Foundation, Inc.*, 188 F.3d 1105, 1114  
26 (9<sup>th</sup> Cir. 1999); *Terrell v. Brewer*, 935 F.2d 1015, 1018 (9<sup>th</sup> Cir.  
27 1991). A supervisory official may be liable under § 1983 only if he  
28 or she was personally involved in the constitutional deprivation, or

1 if there was a sufficient causal connection between the supervisor's  
2 wrongful conduct and the constitutional violation. *Jeffers*, 267 F.3d  
3 at 915; *Redman v. County of San Diego*, 942 F.2d 1435, 1446-47 (9<sup>th</sup>  
4 Cir. 1991); *Hansen v. Black*, 885 F.2d 642, 645-46 (9<sup>th</sup> Cir. 1989).

5 Here, Plaintiff has failed to allege the personal involvement  
6 of Lee Baca in the acts giving rise to the alleged Constitutional  
7 violation. Instead, Plaintiff merely names him in the caption and  
8 makes broad allegations of responsibility based upon his status as  
9 Sheriff. However, there can only be liability under § 1983 if there  
10 is an affirmative link or connection between the defendant's actions  
11 and the claimed injury. *Rizzo v. Goode*, 423 U.S. 362, 372-73 (1976).  
12 Therefore, absent a showing of personal involvement in Plaintiff's  
13 alleged injury or some causal connection between Baca's conduct and  
14 the injury, there is no basis upon which Baca can be found liable  
15 under § 1983. Accordingly, Baca and "Twin Towers" must be dismissed  
16 as defendants.

17 **C. Plaintiff Has Failed to State a Cause of Action Against**  
18 **Defendants Claybrook, Dafeend, or Bryant.**

19 Plaintiff has similarly failed to state a cause of action  
20 against Claybrook, Dafeend, or Bryant. Arguably, he is asserting two  
21 claims here. One seems to involve his transfer to the suicide pod.  
22 The second seems to involve the medical treatment he received.

23 It is well established that the Due Process Clause of the  
24 Constitution does not provide a right to be incarcerated in a  
25 particular prison or in the particular unit of a jail. *Olim v.*  
26 *Wakinekona*, 461 U.S. 238, 245 (1983), *White v. Lambert*, 370 F.3d  
27 1002, 1013 (9<sup>th</sup> Cir. 2004). To the extent that Plaintiff is asserting  
28 otherwise, he has failed to state a claim upon which relief can be

1 granted.

2 To the extent that the complaint be said to assert a  
3 Constitutional claim arising from Plaintiff's medical treatment, the  
4 complaint similarly fails to state a claim upon which relief may be  
5 granted. Under the Eighth Amendment, the government has an obligation  
6 to provide medical care for those incarcerated. *Estelle v. Gamble*,  
7 429 U.S. 97 (1976). However, not every breach of that obligation is  
8 of constitutional magnitude. In order to succeed on this claim,  
9 Plaintiff must show "deliberate indifference to serious medical  
10 needs." *Id.* at 104.

11 In the Ninth Circuit, the deliberate indifference test is  
12 comprised of two parts. *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir.  
13 2006); *McGuckin v. Smith*, 974 F.2d 1050 (9th Cir. 1991), overruled  
14 on other grounds by *WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (9th  
15 Cir. 1997) (en banc). Plaintiff must first show the existence of a  
16 "serious medical need." "Examples of serious medical needs include  
17 'the existence of an injury that a reasonable doctor or patient would  
18 find important and worthy of comment or treatment; the presence of  
19 a medical condition that significantly affects an individual's daily  
20 activities; or the existence of chronic and substantial pain.'" *Lopez*  
21 203 F.3d at 1131 (quoting *McGuckin*, 974 F.2d at 1059-60).

22 In addition, Plaintiff must show that the defendant's response  
23 to this need was deliberately indifferent. *Jett*, 439 F.3d at 1096.  
24 Prison officials may be deliberately indifferent to a prisoner's  
25 serious medical needs when they delay, deny or intentionally  
26 interfere with medical treatment. *Hamilton v. Endell*, 981 F.2d 1062,  
27 1066 (9th Cir. 1992). Deliberate indifference exists only where the  
28 prison official "knows of and disregards an excessive risk to inmate

1 health or safety." *Farmer v. Brennan*, 511 U.S. 825, 837 (1994);  
2 accord *Jackson v. McIntosh*, 90 F.3d 330, 332 (9th Cir. 1996);  
3 *McGuckin*, 974 F.2d at 1060 ("A defendant must purposefully ignore or  
4 fail to respond to a prisoner's pain or possible medical need in  
5 order for deliberate indifference to be established."). Under this  
6 standard, neither an inadvertent failure to provide adequate medical  
7 care, nor mere negligence or medical malpractice, rise to the level  
8 of a constitutional violation. *Sanchez v. Vild*, 891 F.2d 240, 242  
9 (9th Cir. 1989). Moreover, a plaintiff's disagreement with the type  
10 and adequacy of the medical treatment that he was provided does not  
11 rise to the level of a constitutional violation. *Estelle*, 429 U.S.  
12 at 107 (complaint that a doctor has been negligent in treating a  
13 medical condition does not state a valid claim under the Eighth  
14 Amendment); *Jackson*, 90 F.3d at 332.

15 Here, it is apparent that Plaintiff believed he had a staph  
16 infection. On the other hand, Drs. Claybrook and Defeend, as well  
17 as Sgt. Evers, concluded that he was suffering from a mental illness  
18 which required that he be placed on a suicide pod. Even if erroneous,  
19 Plaintiff has not alleged deliberate indifference to a serious  
20 medical need. Rather he has only expressed a disagreement as to the  
21 diagnosis. This is insufficient to state a claim upon which relief  
22 may be granted.

### 23 24 **III. Conclusion**

25 After review and consideration of the Complaint, the Court finds  
26 that it states a cause of action against Defendant Bryant for a  
27 federal Constitutional violation, but fails to state a claim on which  
28 relief may be granted as to the remaining Defendants. Accordingly,

1 the Complaint is dismissed with leave to amend. If Plaintiff chooses  
2 to file a first amended complaint, he should provide facts supporting  
3 the allegations of misconduct against any other named defendant.  
4 Otherwise, the complaint will be ordered served only as to Deputy  
5 Bryant. It is hereby **ORDERED**:

6 1. All claims against Defendants Twin Towers, Sheriff Baca,  
7 Drs. Claybrook and Dafeend, and Sgt. Evers are dismissed with leave  
8 to amend as the complaint fails to allege a viable constitutional  
9 claim for violations of civil rights for the reasons stated above.

10 2. It is established that a *pro se* litigant must be given  
11 notice of the deficiencies of the complaint and an opportunity to  
12 amend the complaint to state a claim, unless it is absolutely clear  
13 the deficiencies of the complaint cannot be cured by amendment.  
14 *Karim-Panahi*, 839 F.2d at 623; *Noll v. Carlson*, 809 F.2d 1446, 1448  
15 (9<sup>th</sup> Cir. 1987). While it appears that Plaintiffs' supervisory  
16 liability claims are not viable, Plaintiff will be give an  
17 opportunity to demonstrate that he can state a viable claim.  
18 Accordingly, if Plaintiff wishes to pursue this action against the  
19 dismissed Defendant, he may file a first amended complaint within  
20 **thirty (30) days** of the date of this Order, remedying the  
21 deficiencies discussed below. The first amended complaint must set  
22 forth all of the facts which support Plaintiff's claims and may not  
23 refer to the original complaint. The first amended complaint should  
24 be captioned "FIRST AMENDED COMPLAINT," and should bear this case  
25 name. The first amended complaint must clearly identify the specific  
26 acts on which the claims are based. It should include the date,  
27 time, place, and circumstances of the offending conduct, the full  
28 details of what each defendant did or failed to do, and the damage

1 or injury suffered by Plaintiff as a result.

2 Plaintiff is cautioned that he is responsible for presenting  
3 factually accurate information to the court. A knowing  
4 misrepresentation to the Court is punishable by sanction, including  
5 dismissal.

6 3. If Plaintiff decides not to pursue this action as to the  
7 dismissed Defendants, he need not file anything in response to this  
8 Order and service will be ordered upon Bryant.

9 4. Plaintiff is cautioned that the failure to timely file a  
10 first amended complaint will be construed by the magistrate judge as  
11 his consent to dismissal of this action as to the defendants and  
12 claims outlined above.

13 5. The Court's deputy clerk shall serve on Plaintiff a copy of  
14 this memorandum and order and a blank civil rights complaint form  
15 bearing the case number assigned to this action and marked to show  
16 that it is a "First Amended Complaint." If Plaintiff chooses to  
17 continue prosecuting this action, Plaintiff must use this form to the  
18 extent possible and not simply attach other documents to it and  
19 attempt to incorporate claims by reference to the attachments. He  
20 may, however, attach additional pages to detail his allegations, if  
21 necessary.

22 **SO ORDERED**

23 Dated: June 10, 2008

24  
25  
26 

27 Marc L. Goldman  
28 United States Magistrate Judge